(3)

Supreme Court, U.S.
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No. 04-239

IN THE

Supreme Court of the United States

Yva G. Scringer

Petitioner

v.

Green Point Bank

Respondent

Brief for Petitioner

Petition for Rehearing

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Your Honors:

My high esteem for this Court and your good selves is, paradoxically, a source of great pain, conflicting as it does with the unfair, capricious and arbitrary judgments to which I have been subject, starting at U.S. Bankruptcy Court and ending in the Supreme Court of the United States thus far. However, I fervently and effectually pray for deliverance from the bitter taste of injustice that plagues me upon reflecting on all of the facts because the unshakeable conclusion from which I suffer is that the Court is making new law—in violation of the principle of separation of powers-- rather than objectively, evenhandedly interpreting and enforcing the laws as written, deriving from the U.S. Constitution. Beyond the factor of race—although I am confident my experience would be impossible for a White person from, say, Brooklyn Heights, or Park Avenue, or Sutton Place to share—the cause of this unfair treatment would logically also be that the Court is unwilling to contemplate the consequences of exposing the multiple horrors assumed—or at least hoped-- to be alien to American jurisprudence, which my case has exposed. By faith and irrefutable facts, I intend to show that denial of my rights constitutes the greater rather than the lesser evil. Accordingly, this "Petition for Rehearing" is, in good faith, submitted from the standpoint of consequences of the decision to sacrifice the widow's rights in defiance of the Prophet Amos' admonitions at Amos 5:10-24.

I understand that only a miracle can allow me to prevail, but with God all things are possible.

ARGUMENT:

I Consequences of allowing absence of evidentiary record

Through the rulings in my case it is now established that transcripts are optional and discretionary in contradiction of the principle, rules, statutes, law that an evidentiary record must unfailingly be maintained. Henceforth, Moore's Federal Practice, v.18, Rule 80 on "Transcription error & [sanctity of]Judicial machinery" are merely academic. No longer need "the machinery of justice" be cause for concern, no longer can it be considered sacrosanct. Since my purchase orders were timely submitted for critical transcripts which as ***surprise*** were revealed to be missing in such key hearings as February 11, 2000 (Confirmation of 99-21821-575) and August 25, 2000 (Prejudice Order re: 99-21821-575) and other key hearings, such as 341 Hearing of June 20, 2001 re: related case -01-15887-608) and other hearings—it was impossible for the "record on appeal" to have been fully transmitted since it had been deleted, presumably inadvertently. Such provisions of law as U.S.C.A. 28, Rule 80, Court transcripts as evidence, necessary to discovery; U.S.C.S. 28 Rule 753 , Bankr Rule 5007 Mandatory creation and maintenance of transcripts are pleasing to the eye and ear—but I have not known them They are totally foreign to my experience. If the mandated record is so irregularly incomplete as I have shown it to be in my principal Brief in this Court as in all lower courts, it is, perforce, impossible to ascertain the "merits" of my case. Yet it has been repeatedly ruled that my case is "without merit". This is compelling proof, therefore, that transcripts are optional and discretionary, the rules, statutes, laws mandating them to the contrary notwithstanding. I am satisfied that each and every member of the Court, standing, by imagination, as I am before the bar, would consider this condition absolutely outrageous, unacceptable and intolerable. Not one would ever boast of justice in America were they forced as I am to take this disgraceful situation and like it. The fact is that I do not like it and the Lord God Who sits high and looks low encourages me to say so and to have the good sense and self esteem not to like it. The telling clue to the injustice being

done relative to the missing transcripts is the fact that not one lower Court has addressed this irreplaceable component of justice. The consequence of the Court's cavalier dismissal of my protest relative to missing transcripts is that "injustice in my case translates to injustice generally" and the erosion of the judicial system's integrity, like some ominous portent, is clearly visible. Rather than provide me even some perverse sense of satisfaction that the system shall ultimately pay for its, frankly, irresponsible disregard for its own tenets – to the contrary, such laxity truly frightens me because I love America, yet I am forced to watch her grow old, it seems, before her time. I am too painfully aware of her needless vulnerability through callous trampling on the least of her citizens. If I had not ordered key transcripts for 99-21821-575 timely as I did on 6/19/01 – the date of the very first Hearing on 01-15887-608, it might have been counted against me. However I did so order the transcript(s) for 99-21821-575 which Judge Craig said could not be modified without unusual circumstances which in my Order to Show Cause I immediately proved existed by (a) the fact that the 5/10/01 sale was illegal since the previous case 99-21821-575 was still open; and (b) no transcripts existed, as revealed by the Court's inability to deliver these to me till this day. (See Bromberg v. People of Illinois, 136 III App 602, establishes remedy for loss of crucial transcripts). Surely, this is a major surprise, qualifying for Bankr 9024, FRCP (Rule 60) relief, because if it is not, we are all in deeper trouble than we would like to think.

II. Consequences of permitting property sale before Closing of Case (11 U.S.C.A, Sect. 541(a)(1))

My case as precedent now permits deletion of all Bankruptcy code relative to the steps, which, heretofore, were set forth as mandatory, following the Dismissal of a case which had always, everywhere, been established as merely ***one step in a process of undoing the Order of Confirmation.*** All statutes,

rules, laws pertaining to (a) discharge of Trustee; (b) Cancellation of Bond; (c) Issuance of Court Order to Close Case – these "troublesome steps" are now effectively – albeit wrongly-- deemed "administrative details", even as the errant Trustee Stuart Gelberg contemptuously pronounced them in the Bankruptcy Court before Judge Dennis Milton on 9/26/01. This new "judge made rule" will greatly relieve all of the Courts' burdensome dockets since countless man hours will be saved by these highly advantageous shortcuts to justice. Certainly, the creditor banks are hugely benefited with an incredible new ability to seize assets, collateral, properties without the "profitless" tedium of "due process". This historic development is a boon to banking where the time value of money is thus magnified and "acceleration of capital" replaces the tiresome mere "velocity of capital". (See Bankruptcy rules 718 & 5009, Case closing)

III. Consequences of overlooking Referee's conflict of interest

Consequences of overlooking Referee's conflict of interest in my case are that Part 36 of Chief Judge Rules of State of New York on Referees can now be ignored by other referees and courts and creditors. It can be rescinded altogether to eliminate the need for unnecessary time consuming study and irrelevant research. The referenced ethics models are now irrelevant as it relates to such cases as mine, wherein a referee maintains an ongoing close business relationship with the creditor – Green Point Bank, in this case, where the Referee conducting the sale at auction, was and remains a tenant in the commercial office of the Bank at 356 Fulton Street, Brooklyn, New York, which is the same building in which the bank itself is located, as owners of the building. The bank's otherwise problematic, inherently conflicting role as both creditor-lienor relative to a debtor and also landlord to an intervening heretofore objective Referee, no longer has significance and it will no longer constitute a

troubling "surprise" or "discovery" or "inexcusable neglect", etc to find such a Referee to be a tenant beholden to one of the parties in a legal matter. Law publisher, Matthew Bender, must now commission Bergman (author, "New York Mortgage Foreclosures") to write new chapters on "Referees' Powers and Responsibilities". Also, see Betcher v. Rademacher, 35 Misc. 2d 693, 230 N.Y.S. 2d Kingsland v. Chetwood, 39 Hun. 602 (1886). Citibank v Shroeder, 266 A.D. 2d 332, 698 N.Y.S. 2d 304 (2d Dept. 1999), citing Corporate Investing Co. v. Mount Vernon meal Products Co., c., 206 App. Div. 273, 276, 200 N.Y.S. 372, quoting Wilcox v. Drought, 36 Misc. 351, 73 N.Y.S. 587 Lobbet v Galpin, 228 A.D. 65, 239 N.Y.S. 76(4th Dept. 1930);Corporate Investing Co. v. Mt. Vernon Metal Products Co.,06 A.D. 273, 200 N.Y.S. 372 (2nd Dept. 1923), Roslyn Sav. Bank v. Jones, 69 Misc. 2d 733, 330 N.Y.S. 2d 954 (1972) All show Referee powers and Responsibilities

IV. Consequences of allowing property sale before Discharge of Trustee, Cancellation of Bond, and issuance of Court Order to Close Case

In all past cases where these conditions were required to be met before the property of the estate could become eligible for foreclosure and sale at auction, all such creditor banks may now return to Court with real hopes of satisfaction. They were needlessly hindered from seizing property by evidently optional, discretionary, dispensable requirements. At the very least, certainly going forward, creditors are now unfettered in these regards. Even if a spirit of injustice has been unleashed on the downside which will infect, pollute and further damage the staggering conscience that is willing to countenance this state of affairs, on the upside, the prospect of a more efficient banking industry is far too attractive to ignore through "quaint" pre-occupations with "quaint" notions about justice for one poor little Black woman whose deliverance from the oppression presents no clear

percentage in the undertaking. (See bankruptcy rules 718 & 5009, Case closing). The consequence of ruling as though this equating of case dismissal were normal and acceptable is progressive chaos, accompanied by lost judicial credibility.

V. Consequences of ignoring timely citation of Local Rules violation relative to 99-21821-575 when the violation was cited in related case 01-15887-608 on 7/09/01 in the Order to Show Cause, thereby constituting an integral part of the record on appeal

If I had not specifically invoked the Local Rules 2002, of Bankruptcy, citing their violation by the creditor bank and trustee relative to both 01-15887-608 and 99-21821-608, with the consequent illegality of the 5/10/01 sale, then, yes, I would not have had so strong a basis as I have for pursuing justice as tenaciously as I have. **However, I did in fact cite the Local Rules and when the Court stated, as the transcript of 7/11/01 shows in my original petition of June 7, 2004 that there was no problem with a foreclosure sale where there was no automatic stay in effect for 01-15887-608, I answered that there was, in fact, a stay through 99-21821-608, the previous case. (See transcript of 7/11/01 Hearing, page 19, lines 14-23). The Court's revealing response was that the case was dismissed and for all of the reasons set forth throughout petitions in each and every one of the Courts below and including this, the Supreme Court of the United States, that response by the Bankruptcy Court shows that an unacceptable rule is being made, a "judge made rule".** (See Mertens, William J , Alex W. Bandrowski, James A. Clark and Russel Franz, petitioners, v Hewitt Associates on Writ of Certiorari to the U.S. Court of Appeals for the 9th Circ. (June 1, 993) Judge made rule. Also see Midlantic Nat'l Bank v NJ Dept. of Environmental Protection Certiorari to the U.S. Court of Appeals for the 3d Circ. No. 84-801. Trustee's right to abandon property subject to mandates re: Public safety; also "judge made rule must give way when it comes into conflict

with a statute" Also see Midlantic Nat'l Bank v N.J. Dept. of E.P., U.S. Supreme Court, 474 & S. 494 (1986), Trustee right to abandon property and judge made rule.

VI. Consequences of disallowing relevancy of Rule 9024, FRCP Rule 60 and its application to this classic case which is rife with "surprise, discovery, inexcusable neglect, errors in law, inadvertence"

On 6/19/01 the Court (Judge Carla Craig) quoted the law relative to relief from "surprise, discovery, inexcusable neglect, errors in law, inadvertence". She cited this rule 9024 FRCP Rule 60 as the only basis upon which she could revisit another Judge's Order. Upon my filing of an Order to Show Cause, citing the illegality of the 5/10/01 sale due to violation of the local rules, the Court, checking the docket and the files found that I was telling the truth and this was the basis upon which the court then modified the 8/25/00 Prejudice Order by allowing me to file a confirmable plan. This was the brightest moment throughout all this litigation, when the court, seeing the truth, acted upon it in the strictest adherence to the law which revealed that the previous case, not having yet been closed, therefore exposed the 5/10/01 sale as illegal. The consequence of denying the applicability of rule 9024 FRCP Rule 60 is to show that a Black person—absent a great deal of money—is not going to qualify as a candidate for relief, no matter how gross are the violations against him or her in matters relating to property, which is why Black people are being separated from their land and property nationwide as authoritative, credible reports periodically show. If the above stated rule does not apply to my case, then it applies to no other case, since it would be very, very difficult to find a case more outrageously fitting the profile for relief than mine.

VII Consequences of denial of rights through injudicious use of nunc pro tunc principle.

The consequence of injudicious application of nunc pro tunc principle in a case like this is that the intention to circumvent the law as an unfair accommodation in favor of the creditor is painfully obvious and it makes a mockery of the "sacred" time line. Whereas everyone knows—even including lay persons such as myself—that the Docket is not to be tinkered or toyed with, yet by this "magical" device, "time travel" is accomplished, which most rational people consider impossible, at least with respect to traveling into the past. This arbitrary and capricious application of a very special principle permits absurd breaches of law and order which must not be countenanced, not even in my case. This technique advertently or inadvertently—I frankly, do not know which one I am dealing with!—circumventing the rules supports what I have coined as "Predatory foreclosure", the close relative of "Predatory lending". It is beautiful, from the creditor's standpoint, at least. From now on, a creditor bank through their attorney and the trustee, need only apply for "dismissal" of a case before going straight to auction, because if the debtor should, miraculously realize that his rights are being abridged and insist upon the full formalities; even if the sale of the property has already been "perpetrated"—the creditor bank need only allow the court to close the case, nunc pro tunc, thus curing the embarrassment otherwise attending omitted "administrative details"

Conclusion

Although my last attorney, Mr. Andrew Nitzberg, misappropriated my $300 docket fee U.S. Postal money order #06903921284 by replacing it with U.S. Postal money order #9905479625 as explained by the U.S. Post Office letters annexed hereto, I have, through great sacrifice, raised the rehearing fee of $200 to persevere despite Green Point Bank's attorney's (Mr. Matthew G. Roseman's) successful intimidation of Mr. Nitzberg which successfully dove him off, abandoning me as all court officers have. Most encouraging,

however, is the fact that two world class law firms have offered to argue my case—one free of charge!– before this Court upon the granting of the Writ of Certiorari. Also, I expect an Amicus Brief from Professor Zinman,

The fig leaf covering the misdeeds and errors of creditor and courts, respectively--namely my inadvertent but unforgiven filing in the face of the August 25, 2000 Prejudice Order– is now withered and offers no justification or defense for the travesty to which I have been subject. Neither the existence, nor nonexistence of the August 25, 2000 Prejudice Order bore any relevance whatsoever to the premature, ergo, illegal auction-sale of the real property of the estate. One issue has absolutely nothing at all to do with the other. Even if the Courts had sanctioned me for violating a Court (Prejudice) Order—which it should not have due to the manifest ineffective assistance of counsel—still, the bank acted illegally when it engaged a Referee to conduct the May 10, 2001 auction and now the consequences of this relaxation of normal constraints upon creditor and referee open wide the doors to widespread, nationwide circumvention of the clearest rules, bankruptcy code, and underlying statutes concerning heretofore mandatory steps to satisfy requirements for case closing. Dismissal alone could never have met those requirements and the August 25, 2000 Dismissal with Prejudice did not meet those requirements in my case. Judge Carla Craig of Bankruptcy Court knew that which is why she, de facto, modified the Prejudice Order, and invited a "confirmable plan" which I could not deliver only because I had no technical understanding of certain questions. I had the income, as the Trustee, Macco, saw, who accepted payments from me. The consequence is that the Bankruptcy Code is now severely and irrevocably compromised on this crucial point of the bankruptcy process which by law and Bankruptcy Code is comprised of (a) Petition; (b) Confirmation; (c) Dismissal; (d) Case Closing. What the creditor bank illegally did and the Courts improperly allowed was (a) Petition; (b) Confirmation; (c)

Dismissal; (d) ***SALE AT AUCTION;*** (e) Case Closing. Since conscience is inarguably the cornerstone of jurisprudence, I need yield to no man in claims to that universally native genius, which is inherited without formal learning and which cannot be purchased, nor can it be bestowed by scholars conferring degrees. Even so, it has been codified by a magnificent body of law, which I testify has been grossly violated in my case. I am comforted somewhat by the certain knowledge that no one reading this factual account of my experience can honestly say without perjuring himself or herself, that they would consider justice to have been done were they in my place. Since these Petitions, Briefs, Appeals to the Court are more than mere intellectual exercises; since they are in fact fervent prayers, not merely for myself, but for America's wellbeing, I am serene in the faith that my words and the spirit that have inspired and formed them are capable of touching the Creator, and it is the Creator, not man, Who shall decide. The heart of the king is in the Hand of The Lord.

In that event, to God be the Glory for His mercy upon the powerless widow and the helpless orphan, who will shout "Surely, there is a God".

Since this predominantly Conservative Court favors prayer in schools and welcomes inclusion of God, essentially, in all human affairs, I believe I will be forgiven, even if not rewarded by the Court, for ending all of my litigation now in Jesus' Name.

November 26, 2004
Brooklyn, New York

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RULE 44.2 CERTIFICATION

I, Yva G. Scringer, attorney, Pro Se, certify that this Petition for Rehearing is presented in good faith and not for delay (as the property is already sold) and that its ground are limited to intervening circumstances of a substantial or controlling effect (e.g., U.S. Post Office evidence of Nitzberg's, (the latest attorney's) misconduct in cooperating with the Respondent (Green Point Bank) by abandoning me due to their unlawful, unethical pressure; consistent with misconduct of first attorney, Jacubowitz (ineffective assistance of counsel), failure of Trustee Gelberg to formally abandon property of estate and Referee Horowitz's conflict of interest; and to other substantial grounds not previously presented—specifically, the consequences of the Supreme Court's ruling relative to nullification of all rules, statutes, code controlling all actions formerly necessary upon dismissal of a chapter 13 case that has been confirmed. The petition is restricted to the grounds specified in this paragraph.

November 26, 2004
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Respectfully,
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